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Attorney for Plaintiffs / Appellees

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FAMILY CENTERED SERVICES OF
ALASKA, INC., *et. al.*,

Defendants / Appellants,
vs.

ROBERT PROBERT and LORETTA E.
PROBERT, *et. al.*,

Plaintiffs / Appellees.

Appeal 09-80074
District Court 4:07-CV-30 RRB

DECLARATION OF CARLA R. SMITH

CARLA R. SMITH, having been first duly sworn upon oath, deposes and states as follows:

1. My name is Carla R. Smith. I am over eighteen years of age, have personal knowledge of the facts, and am competent to testify hereto.
2. I hold the following licenses, degrees, and certifications¹:

¹ See, also the attached resume.

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- Master of Arts (MA) Sociology;
- Master of Social Work (MSW);
- Licensed Professional Counselor (LPC) in Alaska;
- Licensed Master Social Worker (LMSW) in Iowa;
- Licensed Independent Mental Health Practitioner (LIMHP) in Nebraska;

and

- Have worked in Mental Health since 1991

3. I have been employed as a house parent at Family Centered Services of Alaska, Inc. (FCSA) from January 2007 until June 26, 2007. *28 2009* 

4. In this capacity, I have been treating mentally ill clients between the ages of six (6) and eighteen (18) years old that are classified as being "severely emotionally disturbed".

5. I also worked as a therapist for FCSA from January 2007 until June 2007.

6. I was the Community Based Services Administrator (CBSA) for Family Centered of Alaska from June 2007 to March 2008.

7. All FCSA clients have weekly individual and group therapy/drug education group and sometimes family therapy.

8. All or nearly all of the residents of FCSA's Therapeutic Family Homes (TFH) are taking psychotropic medication for their conditions and have monthly medication visits with a psychiatrist. (e.g. see AS 7 AAC 10.1070).

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9. All FCSA clients have intake psychiatric assessments and functional assessments.
10. All FCSA clients receive a psychiatric diagnosis.
11. All FCSA clients have an Axis V Global Assessment of Functioning (GAF) rating of 50 or less.
12. Many of FCSA's clients are violent, destroy property, inflict self-harm, threaten suicide and run away.
13. FCSA has, at times, accepted low functioning clients.
14. FCSA has, at times, accepted clients against the recommendation of a doctor that they should not be in a TFH.
15. FCSA has, at times, accepted clients after they have been denied by the Master Level Clinician.
16. FCSA's Therapeutic Family Parents (TFP) are required to meet licensing regulatory guidelines.
17. In addition to providing a safe, stable home environment for the clients, THP's attend medical checks, completes extensive Medicaid documents, handle crises when they arise, manage the budget of their TFH, and provide rehabilitative services.
18. FCSA has eight (8) TFH's, two (2), of which, are vacant. These vacant homes are located in North Pole and Ester. There are two (2) to four (4)

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TFH's planned for Wasilla to open this fall, one (1) home in Dillingham and one (1) respite house. Each house houses five (5) clients. This is a total of thirty (30) clients total in the currently operational TFH's.

19.FCSA also runs a foster home function as part of its system. These foster homes are classified as Level I facilities.

20.FCSA earns \$171.00 per day for each client as a day rate reimbursement, provided the clients remain in the TFH overnight.

21.FCSA earns an average of \$30 per hour for each client for rehab services through outbilling for group, individual or family skill development.

22.There is a minimum of twenty-five (25) hours of outbilling per client each week for youth counselors (four hours per week for part-time parents).

23.These amounts do not include therapy and medical checks, which are billed separately.

24.I have had the opportunity to review documents from case 4:07-cv-00030 RRB beginning at Doc. 36-6 through Doc. 36-12.

25.These appear to policy and procedure manuals, grant paperwork and other documents generally pertaining to the TFH's.

26.I have reviewed these documents and they appear to either represent the actual policies and procedures at the TFH's while I was employed there or represent policies and procedures that should be in place.

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27.I have examined the OMB paperwork. Exh. 4.

28.I know that FCSA makes grant applications to the state for money to pay for their TFH's.

29.I had not seen this paperwork prior to June 2009.

30.All of the statements therein concerning FCSA's treatment of the mentally ill are true.

31.It appears to me based upon the statements made and the matter in which they are made and the circumstance that they were made, that these statements were made by John Regitano and/or Suszan Dale in support of FCSA's grant application for funding for the building of their TFH's.

32.I know the State of Alaska defines "severely emotionally disturbed" as:

(a) A severely emotionally disturbed child must meet the following criteria:

(1) the recipient's specific symptoms and maladaptive behavior are identified and documented in the clinical record through an intake assessment and functional assessment, and provide the basis for the recipient's diagnosis;

(2) the recipient has, as a result of the recipient's symptoms and maladaptive behavior, serious functional impairment in one or more areas of social functioning, including family, school, or community, as indicated by

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- (A) an Axis V Global Assessment of Functioning (GAF) rating at admission of 50 or less under the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, dated 2000 (DSM-IV-TR), adopted by reference;
- (B) the exhibition of specific mental, behavioral, or emotional disorders that place the recipient at imminent risk for out-of-home supervision or protective custody by state or local authorities;
- (3) the clinical record confirms that the recipient's symptoms and maladaptive behavior have lasted at least six months, and the symptoms and maladaptive behavior require mental health rehabilitation services that are medically necessary, as determined in accordance

7 AAC 43.471. Severely emotionally disturbed children.

Declaration

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on July 2, 2009.

A handwritten signature in black ink, appearing to read "Carla R. Smith", is written over a handwritten date "7/2/09".

s/ Carla R. Smith

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served electronically by ECF to the following attorney(s) and/or parties of the record:

Richard D. Monkman

Dated: July 2, 2009
By: s/ Kenneth L. Covell

Declaration of Carla R. Smith

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